

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

September 21, 2006 Session

CARLTON B. PARKS v. CITY OF CHATTANOOGA, ET AL.

Appeal from the Circuit Court for Hamilton County
No. 05-C-1636 W. Neil Thomas, III, Judge

No. E2006-00617-COA-R3-CV - FILED JANUARY 4, 2007

Carlton B. Parks (“the plaintiff”) is a former police officer with the Chattanooga Police Department. While employed as a police officer, the plaintiff was charged with rape. As a result of the rape allegations, the plaintiff’s employment with the City of Chattanooga was terminated. After the rape charges against the plaintiff were dismissed, he unsuccessfully sought reinstatement. The plaintiff filed two lawsuits against the City of Chattanooga and various other defendants in the United States District Court for the Eastern District of Tennessee. In those two lawsuits, the plaintiff asserted numerous constitutional, statutory, and common law violations. Both of the federal court lawsuits were dismissed on summary judgment. The present lawsuit is the plaintiff’s third lawsuit; he asserts only state law claims in the present suit. The trial court granted the defendants’ motion to dismiss after finding the present claims were barred by the claim preclusion doctrine. The plaintiff appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Circuit Court Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Carlton B. Parks, appellant, *pro se*.

Crystal R. Freiberg and Michael A. McMahan, Chattanooga, Tennessee, for the appellees City of Chattanooga, William S. Parker, Jr., Jimmie L. Dotson, Steven M. Parks, Stephen W. Angel, and James T Carroll.

OPINION

I.

A.

There is a long history of litigation initiated by the plaintiff against the City of Chattanooga and various other defendants. We will begin with a summary of the events leading to these lawsuits.

The plaintiff began working as a police officer for the City of Chattanooga (“the City”) in 1987. He subsequently became the president of the Chattanooga Law Enforcement Officers Association. In that capacity, he became active in the efforts to remedy perceived racial inequality in the City’s police department, including, but not limited to, the number of African-American police officers. In January, 1998, the plaintiff filed a complaint alleging discriminatory practices against Lieutenant Marvin Fuson of the police department’s Internal Affairs.

Ms. Lashundra Brown is a resident of Chattanooga. Ms. Brown claimed she was raped by the plaintiff on January 21, 1998. As a result of the rape allegation, two investigations were commenced. An investigation was commenced by Captain Steve Parks and Sergeant Jackie Williams with the police department’s Internal Affairs Division. Another investigation was conducted by Inspector James T. “Tim” Carroll and Sergeant Rodney Bowman with the police department’s Major Crimes Division. During the investigations, Ms. Brown gave a statement as did a friend of Ms. Brown to whom Ms. Brown allegedly reported the rape immediately after it occurred. Ms. Brown described the boxer shorts the plaintiff was wearing at the time of the alleged rape. The description was consistent with a pair of boxer shorts obtained from the plaintiff. The plaintiff admitted seeing Ms. Brown on the day in question. He claimed Ms. Brown was outside dressed in a nightgown and flagged him down to talk. The plaintiff stated that he went inside Mr. Brown’s house to show her a photograph in an attempt to locate a suspect in an unrelated matter. He denied that a sexual assault occurred.

Captain Parks completed the Internal Affairs investigation, which ultimately concluded that the charges against the plaintiff were substantiated. On March 10, 1998, a disciplinary hearing was held at which the plaintiff and his attorney were present. All of the members of the hearing committee agreed the plaintiff’s employment with the City should be terminated. Chief Dotson made the final decision to terminate his employment effective March 13, 1998.

With regard to the parallel investigation into potential criminal charges being brought against the plaintiff, Inspector Carroll met with the district attorney’s office and it was agreed that there was sufficient evidence to present the charges to a grand jury. On February 2, 1998, the plaintiff was indicted by a grand jury charging him with rape, sexual battery, and official oppression. Then the following events, as reported by the Court of Criminal Appeals, took place:

On September 8, 1998, at an initial settlement conference, the State moved to dismiss the indictments without prejudice stating, “the case is based on the credibility of the victim, and the victim has no credibility at this point.” The defendant insisted that the case should be dismissed with prejudice... [and the trial court dismissed the case with prejudice, over the objection of the State.]

* * *

Ten days later, on September 18, 1998, the State filed a motion to amend the judgment to reflect a dismissal without prejudice. On November 2, 1998, the trial court, with the State's consent, treated the State's motion as a motion to reconsider and placed the defendant's case back on the trial docket.

A year later, on November 5, 1999, the defendant filed a motion to dismiss the indictments. On November 15, 1999, the trial court denied the defendant's motion to dismiss the indictments.... On June 13, 2000, this court granted the defendant's application for an extraordinary appeal pursuant to Rule 10 of the Tennessee Rules of Appellate Procedure.

State of Tennessee v. Carlton B. Parks, No. E2000-00145-CDA-R10-CD, 2001 WL 416738, at *1 (Tenn. Crim. App., filed April 24, 2001), *no appl. perm. appeal filed*. The Court of Criminal Appeals concluded that a “motion to reconsider” was not a Tenn. R. App. P. 4(c) motion that would extend the time after which a judgment would become final. Therefore, the judgment dismissing the charges with prejudice became final after 30 days and the trial court was without jurisdiction or authority to reinstate the original indictments on the trial docket. *Id.* at *2. The decision by the Court of Criminal Appeals effectively marked the end to the criminal charges brought against the plaintiff.

B.

On March 10, 1999, the plaintiff filed his first lawsuit in the United States District Court for the Eastern District of Tennessee. The plaintiff sued the City, the City’s attorney, W. Shelley Parker (“Parker”), as well as Jimmy Dotson (“Dotson”), Steven M. Parks (“Parks”), and Marvin F. Fuson (“Fuson”).¹ The plaintiff’s claims included: (1) a claim against the City and Dotson pursuant to 42 U.S.C. § 1983 for a violation of the plaintiff’s procedural due process rights under the Fourteenth Amendment to the United States Constitution; (2) a claim against Dotson and Parks pursuant to 42

¹ The plaintiff also sued Ervin Dinsmore, Bernard Gloster, Jackie L. Williams, and Charles Cooke. The claims against these defendants either were voluntarily dismissed or abandoned by the plaintiff as the litigation progressed through the federal court system.

U.S.C. § 1983 claiming they violated the plaintiff's First Amendment rights to free speech; and (3) claims against the City for racial discrimination and hostile work environment in violation of: (a) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, ("Title VII"); (b) 42 U.S.C. § 1981; and (c) the Tennessee Human Rights Act, T.C.A. § 4-21-101, *et seq.*, ("the THRA").

On October 2, 2001, the federal district court filed its memorandum opinion granting the defendants' motion for summary judgment as to all of the plaintiff's claims. The federal district court concluded that the plaintiff was afforded "full procedural due process" when he was granted a hearing prior to his termination and he was present at that hearing and represented by counsel. As to the plaintiff's First Amendment claim against Dotson and Parks, the district court concluded that the plaintiff failed to create a genuine issue of material fact that his protected speech was a substantial or motivating factor in the decision to discharge him. The district court added that the "record is devoid of proof suggesting any causal connection between his protected speech and his ultimate termination." With regard to the disparate treatment claims under Title VII, the THRA, and 42 U.S.C. § 1981, the district court concluded that the plaintiff had failed to satisfy the fourth element that was required to establish a *prima facie* case of race discrimination. The fourth element required the plaintiff to show that the position was filled by an individual not in the protected class, that the position remained open, or that similarly situated individuals outside the protected class were treated more favorably than the plaintiff. *See generally McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). The district court went on to add that even if the plaintiff had established a *prima facie* case of race discrimination, the City articulated a legitimate, non-discriminatory reason for the plaintiff's termination. "Specifically, defendants present[ed] tremendous proof that [the plaintiff] was discharged because of Brown's allegations of sexual misconduct on his part and the City's acceptance of those allegations as substantiated." Finally, the district court granted summary judgment to the defendants on the plaintiff's hostile work environment claim after concluding that the plaintiff failed to establish workplace conduct that was "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. *Harris v. Forklift Sys., Inc.* 510 U.S. 17, 21 (1993)...."

The plaintiff appealed the federal district court's judgment to the United States Court of Appeals for the Sixth Circuit. In an unreported opinion, a majority of the panel affirmed the grant of summary judgment to the defendants on all of the plaintiff's claims. *See Parks v. City of Chattanooga*, No. 01-6534, 74 Fed. Appx. 432, 2003 WL 21674749 (6th Cir. July 16, 2003). In a separate opinion, Judge Clay concurred in the grant of summary judgment on all of the plaintiff's claims except the claim alleging retaliation for engaging in protected conduct. Judge Clay believed the plaintiff had created a genuine issue of material fact on that one claim. 2003 WL 21674749, at *8-10. The plaintiff then petitioned the United States Supreme Court for *certiorari*, which was denied, as was the plaintiff's petition to rehear the denial of *certiorari*. *See Parks v. City of Chattanooga*, 541 U.S. 963 (March 29, 2004) (denying petition for *certiorari*) and 541 U.S. 1083 (June 1, 2004) (denying petition for rehearing).

C.

After the federal district court had granted the defendants' motion for summary judgment in the first lawsuit, but before that decision had been affirmed by the Sixth Circuit, the plaintiff filed a second lawsuit against the City and Parks. In this lawsuit, the plaintiff also sued Carroll and Lieutenant Steven Angel ("Angel") for the first time. The second lawsuit was filed on April 22, 2002, and, like the first lawsuit, was filed in the United States District Court for the Eastern District of Tennessee. In this second lawsuit, the plaintiff sued all four defendants pursuant to 42 U.S.C. § 1983 alleging various constitutional violations arising out of their claimed attempt to illegally or in bad faith revive the criminal case that had originally been dismissed by the criminal court with prejudice. The federal district court described the complaint as asserting "claims under 42 U.S.C. § 1983 (alleging violations of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution), 42 U.S.C. § 1985(3), 42 U.S.C. § 1986, Tenn. Code Ann. § 4-21-107, and the state law claims of abuse of process, false imprisonment, and malicious prosecution." The federal district court discussed the plaintiff's 42 U.S.C. § 1983 claim more fully as follows:

[Plaintiff] describes his assertion of a claim under 42 U.S.C. § 1983 as arising from "[u]nreasonable search and seizure in violation of the 4th Amendment to the U.S. Constitution, [and] violation of due process rights of the 5th and 14th Amendments to the U.S. Constitution...." The plaintiff's complaint explains that the claims against the individual defendants arises because the "second prosecution" was "not in good faith and was commenced or renewed without in (sic) scintilla of new evidence...." The claim against the City is described as arising from the allegation that [the] "City's delinquent supervision and failure to train its employees was so severe as to amount to gross negligence or deliberate indifference to constitutional violations when it permitted the second criminal prosecution of the plaintiff."

The defendants filed a motion for summary judgment seeking to have all of the claims dismissed. Following the plaintiff's response to that motion, the federal district court filed a memorandum opinion addressing each of the plaintiff's claims and granting the defendants' motion for summary judgment. *See Parks v. City of Chattanooga*, No. 1:02-CV-116, 2003 WL 23717092 (E.D. Tenn. December 15, 2003). More specifically, after thorough discussion, the district court granted summary judgment on the plaintiff's claims brought pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), and 42 U.S.C. § 1986. 2003 WL 23717092, at *1-6. With regard to the plaintiff's state law claims, the federal district court again addressed each claim in turn. The federal district court granted summary judgment to the defendants on the following state statutory and common law claims: (1) the plaintiff's claims against all defendants for malicious harassment in violation of the THRA, T.C.A. § 4-21-701; (2) abuse of process claims brought against Carroll, Parks, and Angel in their individual capacities; (3) false imprisonment claims brought against Carroll, Parks, and

Angel in their individual capacities; and (4) malicious prosecution claims brought against Carroll, Parks, and Angel in their individual capacities. 2003 WL 23717092, at *7-9.

The plaintiff appealed the dismissal of his second lawsuit to the United States Court of Appeals for the Sixth Circuit. On February 15, 2005, the Sixth Circuit issued a *per curiam* opinion stating:

Carlton Parks appeals the district court's order granting summary judgment to the defendants. After reviewing the record, the parties' briefs, and the applicable law, this court determines that no jurisprudential purpose would be served by a panel opinion and affirms the district court's decision for the reasons stated in that court's opinion.

Parks v. City of Chattanooga, No. 04-5099, 121 Fed. Appx. 123, 2005 WL 361592 (6th Cir. February 15, 2005), *rehearing en banc denied May 16, 2005*.

D.

Undeterred by his lack of success in the federal court system, the plaintiff filed the present lawsuit on November 4, 2005, in the Hamilton County Circuit Court.² The plaintiff has sued the City, Parker, Dotson, Parks, Angel, and Carroll. Every one of these defendants had been a defendant in at least one, if not both, of the plaintiff's two previous lawsuits. The plaintiff essentially asserts two causes of action in the present lawsuit. His first cause of action is for what the plaintiff describes as "official misconduct and breach of contract." In this claim, the plaintiff asserts that the defendants maliciously terminated his employment "based upon a botched and fraudulent criminal prosecution." The plaintiff's claims for official misconduct center around his allegations that the defendants altered documents and audio cassette tapes, concealed evidence, and fabricated evidence in his criminal case. The plaintiff's second cause of action is for "official misconduct and interference with an employment contract." According to the plaintiff, he and the City's attorney had agreed that the City would conduct a reinstatement hearing following the first dismissal of the criminal charges against the plaintiff. Instead of conducting this hearing, the plaintiff claims the defendants improperly conspired to have the criminal charges reinstated. The plaintiff states that he "had a property right" in his tenured employment with the City and that the defendants "fraudulently conspired to deprive the Plaintiff of his employment reinstatement hearing before the Chattanooga City Council...."

The defendants filed a motion to dismiss the complaint arguing that the plaintiff's claims are barred by the applicable statutes of limitations. Alternatively, the defendants argued that the

² The plaintiff is proceeding *pro se* in the present lawsuit. He also proceeded *pro se* in much, if not all, of the federal court litigation. For what it is worth, we note that the plaintiff has done an exceptional job in writing his brief and presenting his case.

plaintiff's claims are barred by *res judicata* and/or collateral estoppel. A hearing on the motion to dismiss was conducted on January 9, 2006, at which time the trial court treated the motion to dismiss as a motion for summary judgment. The trial court then continued the hearing in order to give plaintiff sufficient time to submit evidence in response to the defendants' motion. After the plaintiff responded to the motion, the trial court issued a final judgment granting the defendants' motion. The court stated as follows:

This case was filed November 4, 2005, and it arises out of events which occurred in 1998. A prior action was filed in the United States District Court for the Eastern District of Tennessee on March 10, 1999, arising out of those same facts. A second cause of action arising out of those facts was filed in the same court on April 22, 2002. Both of those actions were dismissed. The civil action cover sheet, filed in this action, indicates that there is a related case pending in Bradley County, which was filed on March 28, 2005. Not only is this action barred by the applicable statute of limitations, but it is also barred by the doctrine against splitting causes of action. For the foregoing reasons, the motion will be granted.

II.

The plaintiff appeals, raising three issues. He claims that the trial court erred when it determined that his claims were barred by the doctrine of claim preclusion which prohibits the splitting of claims. The plaintiff also asserts that the trial court erred when it dismissed his claims after determining they were barred by the applicable statutes of limitation. His final issue relates to his assertion that he created genuine issues of material fact on his various claims and that the trial court therefore should not have granted the defendants' motion for summary judgment.

III.

Since matters outside the pleadings were considered by the trial court when it granted the defendants' motion to dismiss, the trial court properly treated that motion as a motion for summary judgment in accordance with Tenn. R. Civ. P. 12.02.³ In *Teter v. Republic Parking System, Inc.*, 181 S.W.3d 330 (Tenn. 2005), the Supreme Court recently reiterated the standards applicable when appellate courts are reviewing the granting of a motion for summary judgment. The High Court stated:

³ In relevant part, Rule 12.02 provides that if, "on a motion asserting the defense numbered (6) to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

The purpose of summary judgment is to resolve controlling issues of law rather than to find facts or resolve disputed issues of fact. *Bellamy v. Fed. Express Corp.*, 749 S.W.2d 31, 33 (Tenn. 1988). Summary judgment is appropriate only when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04; *Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). In reviewing the record, the appellate court must view all the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in favor of the non-moving party. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000). And because this inquiry involves a question of law only, the standard of review is de novo with no presumption of correctness attached to the trial court's conclusions. *See Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

Teter, 181 S.W.3d at 337.

IV.

The dispositive issue on this appeal is whether the plaintiff's claims are barred by *res judicata*. In *Smith Mechanical Contractors, Inc. v. Premier Hotel Development Group*, No. E2004-03016-COA-R3-CV, 2006 WL 1916690 (Tenn. Ct. App. E.S., filed July 12, 2006), *perm. app. denied December 18, 2006*⁴, this Court determined that *res judicata* bars claims brought in a second lawsuit when the plaintiff could have brought those same claims in a previous lawsuit involving the same parties and the previous lawsuit has been resolved on the merits. In reaching this conclusion, we quoted with approval the following discussion from *Lien v. Couch*, 993 S.W.2d 53 (Tenn. Ct. App. 1998):

Res judicata is a claim preclusion doctrine that promotes finality in litigation. *See Moulton v. Ford Motor Co.*, 533 S.W.2d 295, 296 (Tenn. 1976); *Jordan v. Johns*, 168 Tenn. 525, 536-37, 79 S.W.2d 798, 802 (1935). It bars a second suit between the same parties or their privies on the same cause of action with respect to all the issues which were or could have been litigated in the former suit. *See Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446, 459 (Tenn. 1995); *Collins v. Greene County Bank*, 916 S.W.2d 941, 945 (Tenn. Ct. App. 1995).

⁴ The *Smith Mechanical* case will be published in the official reporter in the near future.

Parties asserting a res judicata defense must demonstrate that (1) a court of competent jurisdiction rendered the prior judgment, (2) the prior judgment was final and on the merits, (3) the same parties or their privies were involved in both proceedings, and (4) both proceedings involved the same cause of action. *See Lee v. Hall*, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990). A prior judgment or decree does not prohibit the later consideration of rights that had not accrued at the time of the earlier proceeding or the reexamination of the same question between the same parties when the facts have changed or new facts have occurred that have altered the parties' legal rights and relations. *See White v. White*, 876 S.W.2d 837, 839-40 (Tenn. 1994).

The principle of claim preclusion prevents parties from splitting their cause of action and requires parties to raise in a single lawsuit all the grounds for recovery arising from a single transaction or series of transactions that can be brought together. *See Bio-Technology Gen. Corp. v. Genentech, Inc.*, 80 F.3d 1553, 1563 (Fed. Cir. 1996); *Hawkins v. Dawn*, 208 Tenn. 544, 548, 347 S.W.2d 480, 481-82 (1961); *Vance v. Lancaster*, 4 Tenn. (3 Hayw.) 130, 132 (1816). The principle is subject to certain limitations, one of which is that it will not be applied if the initial forum did not have the power to award the full measure of relief sought in the later litigation. *See Davidson v. Capuano*, 792 F.2d 275, 279 (2d Cir. 1986); *Carris v. John R. Thomas & Assocs., P.C.*, 896 P.2d 522, 529-30 (Okla. 1995); *see also Rose v. Stalcup*, 731 S.W.2d 541, 542 (Tenn. Ct. App. 1987) (holding that a subsequent action was not barred because the initial court did not have jurisdiction over the claim). Thus, the Restatement of Judgments points out:

The general rule [against relitigation of a claim] is largely predicated on the assumption that the jurisdiction in which the first judgment was rendered was one which put no formal barriers in the way of a litigant's presenting to a court in one action the entire claim including any theories of recovery or demands for relief that might have been available to him under applicable law. When such formal barriers in fact existed and were operative against a plaintiff in the first action, it is unfair to preclude him from a second action in which he can present those phases of the claim which he was disabled from presenting in the first.

Smith Mechanical, 2006 WL 1916690, at *6-7 (quoting **Lien v. Couch**, 993 S.W.2d at 55-56 and citing **Ostheimer v. Ostheimer**, No. W2002-02676-COA-R3-CV, 2004 WL 689881, at *5 (Tenn. Ct. App. W.S., filed March 29, 2004), *no appl. perm. appeal filed*) (“[C]laim preclusion bars any claims that ‘were or could have been litigated’ in a second suit between the same or related parties involving the same subject matter.”).

Returning to the present case, the issue becomes whether the plaintiff could have brought the claims asserted in the present lawsuit in one or both of the lawsuits filed in the federal district court, keeping in mind that all of the defendants in the present case were defendants in one or both of those previous lawsuits. In the federal court lawsuits, not only did the plaintiff assert various federal constitutional and statutory claims, but he also asserted numerous state statutory and common law claims. In both lawsuits, the federal district court exercised its supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367, which provides, in relevant part, as follows:

(a) Except as provided in subsections (b)⁵ and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

* * *

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if –

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or

⁵ The exception in subsection (b) applies to certain cases where a federal court has original jurisdiction based upon diversity of citizenship in accordance with 28 U.S.C. § 1332. Subsection (b) has no application to the present case because in both federal court lawsuits, the federal district court had original jurisdiction pursuant to 28 U.S.C. § 1331 arising from the plaintiff’s federal constitutional and federal statutory claims.

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367 (a), (c) (2006).

The state law claims asserted in the present case certainly could have been asserted in the previous two lawsuits and they would have been decided by the federal district court given that the federal district court exercised its supplemental jurisdiction in both cases and did not decline to decide any of the state law issues. The state law claims in the previous lawsuits were given the federal district court's full attention and were decided on the merits. The federal district court had the power to afford the plaintiff the full relief sought by him in those previous cases and could have done so had the previous lawsuits contained the present state law claims. Therefore, there was no "formal barrier" preventing the plaintiff from bringing all of his claims together. The final judgments on the merits in the first two cases were rendered by a court of competent jurisdiction and involved the same defendants that are sued in the present case. All of the claims asserted in all three lawsuits arise out of the same series of events. We conclude that the claims in the present case fall squarely within the claim preclusion doctrine. Therefore, the trial court correctly dismissed the present case because the claims are barred by the doctrine of *res judicata*.

Because we conclude that all of the claims asserted by the plaintiff in the present lawsuit are barred by *res judicata*, we need not decide whether those claims were filed outside the statute of limitations period or whether a genuine issue of material fact had been created. Accordingly, the plaintiff's remaining two issues are pretermitted.

V.

The judgment of the trial court is affirmed. This cause is remanded to the trial court for collection of costs assessed below, pursuant to applicable law. Costs on appeal are taxed to the appellant, Carlton B. Parks.

CHARLES D. SUSANO, JR., JUDGE